

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

RUTH H. SINGLETARY,

Plaintiff and Appellant,

v.

HEALTH LINK MEDI-VAN,

Defendant and Respondent.

G033983

(Super. Ct. No. 03CC05754)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, Eleanor M. Palk, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Law Office of Ron W. Townsend and Ron W. Townsend for Plaintiff and Appellant.

The Law Offices of Linda M. Libertucci and Sarah Yoseloff for Defendant and Respondent.

\*

\*

\*

Plaintiff Ruth H. Singletary appeals from an order vacating a default and default judgment against defendant Health Link Medi-Van, contending defendant was actually served when plaintiff left the summons and complaint with a person apparently

in charge of defendant's office and then mailed a copy. The court did not abuse its discretion in setting aside the default and the judgment, and we affirm.

## FACTS AND PROCEDURAL HISTORY

Plaintiff filed a personal injury action against defendant, which provides "nonemergency wheelchair and gurney medical transportation," alleging that she was injured while being driven to a medical appointment. In the complaint, plaintiff identified defendant as "a business, of unknown form, doing business in Orange County, California."

Plaintiff filed a proof of service, which stated that the summons and complaint were served on Health Link Medi-Van by serving the President, Gary Fritzsche, at an address in Lancaster. The proof of service showed service was effected "by leaving the copies with or in the presence of: [¶] Penny Insko/person in charge [¶] . . . a person at least 18 years of age apparently in charge at the office or usual place of business of the person served. I informed him or her of the general nature of the papers [¶] . . . on 06/03/03 . . . ." (Capitalization omitted.) It also stated: "The 'Notice to the person served' (on the summons) was completed as follows: (c) on behalf of: [¶] Health Link Medi-Van [¶] under CCP 416.10 (corporation)." (Capitalization omitted.) Accompanying the proof of service was a declaration of diligence indicating three attempts at personal service were made before the substituted service.

When no answer was filed, plaintiff filed a request to enter default and mailed copies to Fritzsche at the Lancaster address and to a claims adjuster representing defendant, with whom plaintiff had corresponded before filing the complaint. About six months later, in January 2004, plaintiff filed an application to prove up the judgment and mailed copies, along with a statement of damages, to Fritzsche in Lancaster and to the adjuster. Default judgment was then entered in favor of plaintiff.

Within six weeks, defendant filed a motion to set aside the default and the judgment as void under Code of Civil Procedure section 473, subdivision (d). In his declaration, Fritzsche stated that defendant is a California corporation and he is the agent for service of process. Defendant's corporate office is in Redlands and its administrative office is in Anaheim. Fritzsche further declared that the office in Lancaster "is not used by [defendant] for any administrative or corporate purpose." It is an office used by Insko, who is a dispatcher and driver for defendant, in space defendant rents from another company. He also claims the first notice he had of the action was when he received a package of documents from Insko that included the request to prove up the judgment.

In her declaration, Insko stated she was the only person using defendant's Lancaster office, which is not open to the public and does not have a mailbox. She declared she was not at her office on June 3, 2003, the date the proof of service showed delivery, and had never personally been given any documents in connection with this action or spoken to anyone attempting service. She further stated that sometime in the summer of 2003 she found "an envelope left at [her] door" containing "documents [that] were legal in nature," which she forwarded to defendant's health and safety manager. In January 2004, she found another envelope at the door containing documents referring to plaintiff. She sent those to Fritzsche.

Defendant's counsel also filed a declaration indicating that an approximate three minute search on the Internet through the California Business Portal-Secretary of State and Westlaw, she found current corporate information for defendant, including its addresses in Redlands and Anaheim and its agent for service of process. The Lancaster address was not listed.

In support of her opposition, plaintiff filed the process server's declaration, who stated that he personally met Insko, who identified herself as the person in charge of the Lancaster office. He declared he then served her with the summons, complaint, and

statement of damages and advised her what the documents were. Insko told him she would forward them to Fritzsche.

Plaintiff's lawyer also filed a declaration. He claimed that, after the incident that is the subject of the complaint, he reported it to defendant and was told to send a letter to defendant at its Anaheim address, which he did. He declared that "[a]t no time was [he] informed of a corporate name of defendant . . . or that a designated agent for service was located at Anaheim . . . or any other location." He further stated that in a letter from defendant's claims adjuster, there was no "reference [to] a corporate name, or other identifying information." A year after mailing the letter to defendant in Anaheim, he "personally researched numerous sources for current information and [an] address" for defendant, and "only one . . . public source could be located, Business Credit USA, which listed the name 'Health Link Medi-Van,' with one . . . location," in Lancaster. "Next to the address, the printout states: 'Single Location.'"

After a hearing, the court granted the motion.

## DISCUSSION

We review an order granting a motion to vacate a judgment as void for lack of valid service for abuse of discretion. (*Gibble v. Car-Lene Research, Inc.* (1998) 67 Cal.App.4th 295, 301.) "'The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.' [Citation.]" (*Walker v. Superior Court* (1991) 53 Cal.3d 257, 272.) It is plaintiff's burden to show an abuse of discretion. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 331.)

Plaintiff contends that the default and default judgment should not have been set aside because she properly served defendant under Code of Civil Procedure section 415.20, subdivision (a). That section does allow for service on a person “by leaving a copy of the summons and complaint during usual office hours in his or her office . . . with the person who is apparently in charge thereof, and by thereafter mailing a copy of the summons and complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left.” (Code Civ. Proc., § 415.20, subd. (a).)

Although the proof of service and the declaration of plaintiff’s process server filed in opposition to the motion state that the summons and complaint were left with Insko, Insko declared she never personally received them. Rather, she found an envelope containing documents left at her door.

In ruling on the motion to vacate, it was the trial court’s responsibility to weigh and resolve conflicts in the evidence and to determine the credibility of the witnesses. (*Johnson v. Pratt & Whitney Canada, Inc.* (1994) 28 Cal.App.4th 613, 622-623.) Although the court did not make specific findings, the testimony of Insko that she was never given any documents is sufficient to defeat a finding of valid substituted service under Code of Civil Procedure section 415.20, subdivision (a), which requires the summons and complaint be given to one who was apparently in charge of defendant’s office. “When, as here, ‘the evidence gives rise to conflicting reasonable inferences, one of which supports the findings of the trial court, the trial court’s finding is conclusive on appeal. [Citations.]’ [Citation.]” (*Johnson v. Pratt & Whitney Canada, Inc., supra*, 28 Cal.App.4th at p. 623.)

Plaintiff complains the court erred when it ruled she had failed to search for and serve defendant’s designated agent for service of process. She claims she had no duty to examine records to determine defendant’s true name or status or to serve

defendant as a corporation. Plaintiff contends defendant hid its corporate identity and she should not be penalized for serving it as an unknown business entity. This argument is flawed.

First, nothing in the record supports a claim defendant hid its corporate status. It had filed with the Secretary of State, and information about it was easily available. Plaintiff did not have to know defendant was a corporation to discover its correct address; documents in the record, which defendant's counsel obtained in "approximately three minutes," reflect it was available through Westlaw in at least two other databases.

And whether or not plaintiff had to investigate defendant's status in order to name it as a defendant, she still had to exercise some diligence to properly serve it. (See *Parish v. Peters* (1991) 1 Cal.App.4th 202, 213; *Slusher v. Durrer* (1977) 69 Cal.App.3d 747, 755.) Her lawyer's vague and nonspecific declaration that he "personally researched numerous sources" to find an address to serve defendant does not meet that standard, especially in light of the ready availability of correct information. His declaration is glaring in its lack of evidence that he even made a simple telephone call to defendant's adjuster or its Anaheim office, from which plaintiff was still being transported to her medical appointments, to obtain an address. This is especially true in light of the allegation in the complaint that defendant did business in Orange County.

Finally, even if the trial court had ruled service was defective because plaintiff erred in naming defendant as a corporation, we review the result, not the rationale, of its decision. (*Estate of Beard* (1999) 71 Cal.App.4th 753, 776.) And the result was correct.

Nor does the fact that defendant may have had actual notice of the action cure the lack of service. (*Kappel v. Bartlett* (1988) 200 Cal.App.3d 1457, 1466.) The decision to set aside the default and default judgment is supported by the record and was a valid exercise of the trial court's discretion.

DISPOSITION

The order is affirmed. Respondent is awarded costs on appeal.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

BEDSWORTH, J.

FYBEL, J.